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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,816	07/17/2000	Robert D. Farris	50107-468	9192

32127 7590 03/22/2004

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EXAMINER

PEZZLO, JOHN

ART UNIT PAPER NUMBER

2662

DATE MAILED: 03/22/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/617,816

Applicant(s)

FARRIS ET AL.

Examiner

John Pezzlo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11 and 13-44 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 10, 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S. C. 102(e)).

I. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Farris (US 6,064,653).

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1. Regarding claim 1 - Farris discloses setting up a voice call (link) on the Internet (the first landline public packet switched network). Farris discloses carrying voice information between the terminals over the Internet. Farris discloses monitoring the QoS (quality of service) in the Internet. Farris discloses setting up a second voice communication over a pipeline between the two gateway servers which are coupled to the terminals when the monitored QoS departs from a predetermined value. Refer to column 8 lines 1 to 7 and column 10 lines 47 to 67 and column 11 lines 18 to 33 and column 12 lines 18 to 26 and column 13 lines 8 to 39.

The pipeline is a second landline packet switched network which is the ISDN (Integrated Services Digital Network). In the invention the ISDN is a separate data network from the POTS and does not utilize the PSTN voice circuit-switching facilities. It is well known in the art, that the ISDN narrowband (64kbps data and voice) and ISDN broadband (ATM) facilities were developed by the telephone companies to provide data services and as used in the invention the ISDN is a data tunnel (pipeline) connecting the gateway servers not part of the PSTN normal circuit-switched POTS, refer to column 10 lines 47 to 67 and column 11 lines 1 to 5 and column 14 lines 13 to 33.

2. Regarding claim 2 - Farris discloses that the quality measured is the quality of delivered voice signal, refer to the abstract and column 4 lines 11 to 33 and column 5 lines 16 to 27 and column 10 lines 46 to 60 and column 14 lines 55 to 67.

3. Regarding claim 3 - Farris discloses that the second voice link is set-up automatically, refer to column 14 lines 13 to 33.

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4. Regarding claim 6 - Farris discloses that the terminals are coupled to the gateway servers via the POTS, refer to Figure 3.

5. Regarding claim 7 - Farris discloses that the switched network is the PSTN, refer to Figure 3.

6. Regarding claim 8 - Farris discloses that the terminals are telephone terminals, refer to Figure 3.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

II. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farris (US 6,606,653).

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1. Regarding claims 4 and 5 - Farris discloses automatically routing a call from over the Internet to over the ISDN data network.

Farris does not expressly disclose transmitting a recorded message to the initiating terminal and receiving a response.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to transmit a recorded message to the initiating terminal and receiving a response.

The suggestion/motivation for doing so would have been that Farris discloses the SS7 control network and the ability to transmit recorded messages and receive responses from terminals, refer to column 8 lines 7 to 30. The benefit being the terminal would know the call is being rerouted to maintain higher quality and gain more customer satisfaction and a larger market share and more sales and profits.

#### ***Allowable Subject Matter***

Claims 9, 11, 13-44 are allowable over the prior art of record.

Claims 10 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 20 January 2004 have been fully considered but they are not persuasive.

The examiner has stated in previous actions that the ISDN and the POTS are to be interpreted as separate networks. The networks, which form a part of the prosecution history are the POTS, the ISDN, the CCIS (SS7), and the Internet. These networks are known in the art as distinct by virtue of the fact that they utilize separate forms and procedures and signaling and protocols. It is true that these networks might share physical plant such as buildings and wiring but make no doubt about it they are separate networks with separate features and attributes and the ISDN and the Internet offer separate functions to their customers which are not available over the POTS such as certain types of data and multimedia and video. The CCIS is the signaling or control plane, which supports the voice and circuit switch capabilities of the POTS network.

The applicants have presented a hyperdictionary definition to support their case that the POTS and the ISDN are one network. However, the second line of the definition states "ISDN is intended to eventually replace the plain old telephone system". If the ISDN was the same as the POTS no qualification would be necessary.

In the reference that the examiner has cited, Farris (US 6,064,653), the POTS and ISDN are separate networks. Farris states that the ISDN is only used to carry data between switching centers and as such, is a separate data network distinct from the voice switching network utilized by POTS, refer to column 1 lines 40 to 67 and column 2 lines 1 to 7 and column 5 lines 27 to 36 and column 11 lines 18 to 33 and column 13 lines 7 to 25.

Applicants argue on pages 10 and 11 of the response (5 August 2003) that the ISDN is part of the POTS network. The examiner respectfully disagrees. The ISDN was developed as a

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separate packet network to handle voice, data, and multimedia and as such is distinct from the conventional POTS network. The conventional POTS network as depicted in Bartholomew et al. (US 5,680,442) shows the SS7 control plane, which is used to control (set-up and tear down telephone circuits) the conventional POTS network, which comprises trunks implemented on T1/E1 circuits which pass PCM data. The ISDN as depicted in "Digital Telephony and Network Integration" by Keiser and Strange, section 12.3.4 pages 426 to 428, details the ISDN as a packet switch unit (PSU) and Integrated Services Line Unit (ISLU), which are separate from the POTS network.

Furthermore, as stated by the examiner in the rejection, the ISDN is a packet data tunnel (pipeline) connecting the gateway servers not part of the PSTN normal circuit-switched POTS, refer to column 10 lines 47 to 67 and column 11 lines 1 to 5 and column 14 lines 13 to 33.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (703) 306-5420. The examiner can normally be reached on from 8:30 AM to 4:30 PM Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached on (703) 305-4744. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C.

or faxed to:

(703) 872-9306

For informal or draft communications, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Receptionist (Sixth floor)

Crystal Park 2

2121 Crystal Drive


Arlington, VA.

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John Pezzlo

21 March 2004



**JOHN PEZZLO**  
**PRIMARY EXAMINER**